

Appl. No. 09/774,505  
Amdt. dated 01/17/2006  
Reply to the Final Office Action of 11/17/2005

### **REMARKS**

Reexamination and reconsideration of this application is requested. By this Response, no claims have been amended. After this Response, Claims 1-33 remain pending in this application.

### **Allowable Subject Matter**

The Examiner objected to Claims 7, 8, 15, 19-22, and 31, as being dependent on a rejected base claim, but indicated that these claims would be allowable if rewritten in independent form including all limitations of the base claim and any intervening claims.

In view of the arguments and remarks below, Applicant believes that Claims 7, 8, 15, 19-22, and 31 now recite in allowable form. Accordingly, Applicant requests that the Examiner withdraw the objection to these claims.

Additionally, Applicant wishes to acknowledge and thank the Examiner for expressly allowing Claims 23-25, 27-28, and 32-33.

### **Claim Rejections - 35 USC § 103**

The Examiner rejected Claims 1-6, 9-14, 16, 26, and 29-30 under 35 U.S.C. 103(a) as being unpatentable over Jones et al., U.S. Pat. No. 6,512,776, in view of Nakamura U.S. Patent No. 5,771,352.

(3-5, 23-25) With respect to Claim 1 and similarly Claim 29 the Examiner states on page 2 of the Final Office Action that Jones teaches "...requesting information to be

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delivered as an ordinary unicast packet". The Examiner cites FIG. 2 of Jones in support thereof.

However, nowhere does Jones explicitly stated that a first networked device requests information and a second networked device requests at least part of the information to be delivered as an ordinary unicast packet. Applicant would like to respectfully remind the Examiner that Jones only teaches conventional multicasting. When multiple clients request identical data streams, the router notifies the clients that the UDP packets from the data streams are replaced by a single multicast data stream. In other words, the clients are "tuned" into a multicast address to receive the requested information and are not expecting to receive the information as an ordinary unicast packet. See, for example, Jones at col. 4, lines 32-43. Applicant would also like to respectfully remind the Examiner that claim elements are to be read in light of each other. Nowhere does Jones teach, anticipate, or suggest receiving requests for information to be delivered as an ordinary unicast packet, transmitting the information in a reliable multicast packet, and the requesting devices receiving the information as how they requested it, i.e. as an ordinary unicast packet. The devices in Jones are expecting multicast packets (i.e. router informs devices that data is being delivered in a multicast stream) and receive multicast packets. Therefore, the present invention distinguishes over Jones for at least this reason.

The Examiner correctly states on page 2 that "Jones does not teach a packet including a first address used for the first networked device, and second address used for the second networked device, and a data payload that includes at least a part of the first item of information, for delivering the data payload to multiple networked devices, wherein the at least part of the first item of information included in the data payload being destined for reception by the first device in a first ordinary packet, and further wherein the at least part of the first item of information included in the data payload being destined for reception by the second networked device in a second ordinary unicast packet".

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However, the Examiner goes on to combine Jones with Nakamura stating that at FIGs. 2-3 and col. 8, lines 45- col. 9, line 9 Nakamura teaches the above deficiencies of Jones. Applicant respectfully disagrees with this assertion. Nakamura is directed towards a communication control apparatus capable of communicating among plural users when the plural users bring respective equipment into proximity of each other. See Abstract. Nakamura teaches that a packet is used to send data to members of a group. The packet includes a head portion in which a preamble is added, which indicates a start portion of the packet. A packet-length field, a destination-field length field, and a destination field are also included in the packet. The destination-field length field indicates the number of terminals that the packet is to be transmitted to in a multicast fashion. The destination field stores the terminal discriminating information of the terminals that are to receive the packet.

The present invention, on the other hand, recites "forming a combined packet, in response to the first request from the first networked device and the second request from the second networked device, the combined packet comprising a reliable multicast packet including a packet header comprising a first network address used for the first networked device, a second network address used for the second networked device, and the combined packet further comprises a data payload that includes at least a part of the first item of information, for delivering the data payload to multiple networked devices, wherein the at least part of the first item of information included in the data payload being destined for reception by the first networked device in a first ordinary unicast packet, and further wherein the at least part of the first item of information included in the data payload being destined for reception by the second networked device in a second ordinary unicast packet".

Nakamura only teaches multicasting data to members of a group and never teaches or suggests unicast in any manner. See Nakamura at col. 8, lines 39-67 to col. 9, lines 1-45. Nakamura teaches that a packet is multicasted to group members, wherein the

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packet includes the terminal discriminating information of the terminals that are to receive the packet. When the terminals receive the packet, they are receiving the multicast packet and not an ordinary unicast packet, as recited for the present invention. In fact, the multicast packet of Nakamura includes a preamble that indicates to the group members that data is being multicasted. Also, Nakamura teaches that the data can only be multicasted when the group devices are in close proximity with each other. The present invention is not limited by the distance between the sender and receivers.

Nowhere does Nakamura teach "a reliable multicast packet including a packet header comprising a first network address used for the first networked device, a second network address used for the second networked device...wherein the at least part of the first item of information...being destined for reception by the first networked device in a first ordinary unicast packet, and...wherein the at least part of the first item of information...being destined for reception by the second networked device in a second ordinary unicast packet". In fact Nakamura teaches that each group device receives the multicast packet, determines if its discriminating information is included in the multicast packet and if so, the device extracts the data. Accordingly, the present invention distinguishes over Nakamura for at least these reasons.

Nakamura's teaching of multicast in the above embodiment is not the same as conventional multicast, as taught by Jones. In conventional multicasting, receivers subscribe to a single multicast group address. A conventional multicast packet only has a single destination address, which is the multicast group address. The conventional multicast packet is transmitted to single multicast group address where the subscribers receive the data. Jones teaches that the router notifies the requesting devices of the multicast stream. Therefore, the requesting devices are "tuned" into the multicast group address in which the multicast data is delivered to. Applicant respectfully suggests that the Examiner's combination of Nakamura, who is teaching sending a multicast packet with discriminating information for a plurality of receivers, with Jones, who requires that a single group address to be present in the multicast packet, is improper.

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The Federal Circuit has consistently held that when a § 103 rejection is based upon a modification of a reference that destroys the intent, purpose or function of the invention disclosed in the reference, such a proposed modification is not proper and the *prima facie* case of obviousness cannot be properly made. See *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Here the intent, purpose, and function of Jones taken alone or in view of Nakamura is multicasting using a conventional multicasting packet. That is, a multicast packet with a single group address is transmitted. Because the Examiner cites the teachings of Nakamura wherein discriminating information for a plurality of group members is included in a multicast packet, the Examiner destroys the intent and purpose of Jones' intent of conventional multicasting, which uses a single multicast group address. In contrast, the intent of the present invention is using a reliable multicast packet that includes a separate network address for each first and second network device wherein the data requested by each networked device is received at the networked device as an ordinary unicast packet. Accordingly, the combination of Jones and Nakamura results in an inoperable system. Therefore, the Examiner's case of "*Prima Facie Obviousness*" should be withdrawn.

Furthermore, the Federal Circuit stated in *McGinley v. Franklin Sports, Inc.*, (Fed Cir 2001) that if references taken in combination would produce a "seemingly inoperative device," such references teach away from the combination and thus cannot serve as predicates for a *prima facie* case of obviousness. *In re Spinnoble*, 405 F.2d 578, 587, 160 USPQ 237, 244 (CCPA 1969) (references teach away from combination if combination produces seemingly inoperative device); see also *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (inoperable modification teaches away). Here, Jones teaches multicasting using a single conventional multicasting packet, which includes a single multicast group address. Nakamura teaches an incompatible system discriminating information for a plurality of group members is included in a

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multicast packet. Therefore, the attempt to combine Jones with Nakamura to produce the presently claimed invention, wherein a reliable multicast packet is used that includes a separate network address for each a first and second network, which receive the requested data as an ordinary unicast address, would produce an inoperable device. Accordingly, the combination of Jones and Nakamura is improper.

Additionally, Nakamura teaches at col. 9, lines 31-45 that the group number can be included in the destination field instead of the terminal discriminating information and that the destination-field length field no longer is required. The packet is transmitted only once. This embodiment of Nakamura more closely resembles conventional multicasting. However, because only the group number is included in the destination field, Nakamura does not teach, anticipate, or suggest "forming a combined packet, in response to the first request from the first networked device and the second request from the second networked device, the combined packet comprising a reliable multicast packet including a packet header comprising a first network address used for the first networked device, a second network address used for the second networked device, and the combined packet further comprises a data payload that includes at least a part of the first item of information, for delivering the data payload to multiple networked devices, wherein the at least part of the first item of information included in the data payload being destined for reception by the first networked device in a first ordinary unicast packet, and further wherein the at least part of the first item of information included in the data payload being destined for reception by the second networked device in a second ordinary unicast packet".

Further, nowhere does Jones or Nakamura state using a reliable multicast packet. Jones and Nakamura are completely silent on forming a reliable multicast packet. In fact Jones teaches using UDP packets, which are not reliable packets. UDP packets are designed for efficiency, and retransmission of UDP packets destroys the communication. With respect to Nakamura, where the Examiner directs the Applicant to, col. 8, lines 45-col. 9, line 9, Nakamura never mentions using a reliable multicast packet. Accordingly,

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the present invention distinguishes over Jones alone or taken in view of Nakamura for at least the reasons stated above.

Additionally, Claims 2-6 and 9-14 depend from Claim 1, and, since dependent claims recite all of the limitations of the independent claim; it is believed that, therefore, Claims 2-6 and 9-14 also recite in allowable form. However, additional remarks regarding Claims 12-13 are provided below.

As stated in the Amendment dated August 17, 2005, Claims 12-13 recite "receiving a request for web content" and "receiving an http request" respectively. Nowhere does Jones teach, anticipate, or suggest "receiving a request for web content" and/or "receiving an http request". In fact, Jones teaches using multicast for broadcast oriented traffic as opposed to unicast-oriented traffic, for example, http traffic, as recited for the present invention. See Jones at Abstract. Additionally, Jones teaches using multicast for UDP traffic and nowhere does Jones teach how multicasting would be used for TCP traffic such as web content and http. Conventional multicast, as taught by Jones, is commonly used for UDP traffic, however, Jones does not teach using multicast, as taught by the present invention, for web content and http requests. Accordingly, Claims 12-13 are distinguishable over Jones alone or in combination with Nakamura. Applicant requests that the Examiner withdraw the rejection and allow Claims 12-13.

(17-19, 26-28) Regarding Claims 16 and similarly Claim 30, the Examiner correctly states on page 6 of the Final Office Action that Jones does not teach "receiving a first reliable unicast header part associated with the first address; and receiving a second reliable unicast header part associated with the second address" However, the Examiner goes on to combine Jones with Nakamura to overcome the deficiencies of Jones.

The arguments and remarks made above with respect to Claims 1 and 29 are likewise applicable here in support of the allowability of Claims 16 and 30, and such arguments will not be repeated here. Accordingly, neither Jones nor Nakamura, alone or

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in any combination thereof teach, anticipate, or suggest the present invention as recited for Claims 16 and 30. Therefore, Applicant believes that the rejection under 35 U.S.C. § 103(a) has been overcome. Applicant respectfully requests that this rejection be withdrawn.

(20-22) Regarding Claim 26, the Examiner correctly states on page 6 of the Final Office Action that Jones “does not teach the item of information is to be received at the first destination network address in a first unicast packet and at the second destination network address in a second unicast packet”. However, the Examiner goes on to combine Jones with Nakamura to overcome the deficiencies of Jones.

The arguments and remarks made above with respect to Claims 1 and 29 are likewise applicable here in support of the allowability of Claim 26. Accordingly, neither Jones nor Nakamura, alone or in any combination thereof teach, anticipate, or suggest the present invention as recited for Claim 26. Therefore, Applicant believes that the rejection under 35 U.S.C. § 103(a) has been overcome. Applicant respectfully requests that this rejection be withdrawn.

(29-31) The Examiner rejected Claim 17 under 35 U.S.C. 103(a) as being unpatentable over Jones et al., U.S. Pat. No. 6,512,776, in view of Nakamura U.S. Pat. No. 5,771,352, and further in view of Weaves, U.S. Pat. No. 6,873,618. This rejection is respectfully traversed.

Claim 17 depends from Claim 16 and since dependent claims recite all of the limitations of the independent claim, it is believed that, therefore, Claim 17 is distinguishable from any single reference or any arguable combination of Jones and Nakamura, as has been already discussed above with respect to Claim 16. However, additional arguments regarding Claim 17 are given below.

The Examiner correctly states on page 8 of the Final Office Action that neither

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Jones nor Nakamura teach a "TCP header". However, the Examiner goes on to combine Jones and Nakamura with Weaves to overcome the deficiencies of these two references. With respect to Jones and Nakamura, the above arguments and remarks regarding Claim 16 are likewise applicable here in support of the allowability of Claim 17. These applicable arguments have already been presented above and will not be repeated here.

Nowhere does Jones alone or taken in view of Nakamura and/or Weaves teach, anticipate or suggest "receiving a data content part of a first packet, the first packet comprising a reliable multicast packet; receiving a first destination network address part of the first packet, wherein the first destination network address is used for a first networked device; receiving a second destination network address part of the first packet, wherein the second destination network address is used for a second networked device; receiving a first reliable unicast header part of the first packet that corresponds to the first destination network address; and receiving a second reliable unicast header part of the first packet that corresponds to the second destination network address".

Therefore, Jones, Nakamura, and Weaves either alone or in any combination thereof do not teach or suggest the claimed invention as recited for Claim 16 and its dependent Claim 17. Accordingly, Applicant believes that the rejection under 35 U.S.C. § 103(a) has been overcome. Applicant respectfully requests that this rejection be withdrawn.

(32-34) The Examiner rejected Claim 18 under 35 U.S.C. 103(a) as being unpatentable over Jones et al., U.S. Pat. No. 6,512,776, in view of Nakamura U.S. Pat. No. 5,771,352, and in further view of Bryden et al., U.S. Pat. No. 6,717,944. This rejection is respectfully traversed.

Claim 18 depends from Claim 16 and it is believed that, therefore, Claim 18 is distinguishable from any single reference or any arguable combination of Jones and

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Nakamura, as has been already discussed above with respect to Claim 16. However, additional arguments regarding Claim 18 are given below.

The Examiner correctly states on page 9 of the Final Office Action Jones and Nakamura do not teach a "determining a first and second next hop based on the first and second destination addresses". With respect to Jones and Nakamura, the above arguments and remarks regarding Claim 16 are likewise applicable here in support of the allowability of Claim 18. These applicable arguments have already been presented above and will not be repeated here.

Bryden teaches determining the next hop address based on the destination address in the context of dynamically allocating virtual circuits, which is a completely different context than the presently claimed invention as recited for Claim 18. Jones teaches using a single multicast group address for multicasting information in a network and Nakamura transmitting a separate packet simultaneously to each terminal in a group. Therefore, one of ordinary skill in the art would have **no** motivation to combine Bryden's determination of the next hop address based on the destination address in the context of dynamically allocating virtual circuits with Jones and Nakamura.

Bryden teaches a unicast protocol message (**unicast messages only contain one destination address**) and determining the next hop based on the single destination address in the unicast message. Bryden does not teach determining a first next hop and then a second next hop based on the first and second destination network addresses respectively. The first and second destination network addresses are part of a first packet comprising a reliable multicast packet, as recited for Claim 16.

Once again Applicant respectfully reminds the Examiner that the Federal Circuit has repeatedly warned against using the Applicant's disclosure as a blueprint to reconstruct the claimed invention out of isolated teachings of the prior art. See MPEP §2143 and Grain Processing Corp. v. American Maize-Products, 840 F.2d 902, 907, 5

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USPQ2d 1788 1792 (Fed. Cir. 1988) and In re Fitch, 972 F.2d 160, 12 USPQ2d 1780, 1783-84 (Fed. Cir. 1992).

Therefore, Jones, Nakamura, and Bryden either alone or in any combination thereof do not teach or suggest the claimed invention as recited for Claim 18 nor is there any suggestion to combine these references. Accordingly, Applicant believes that the rejection under 35 U.S.C. § 103(a) has been overcome. Applicant respectfully requests that this rejection be withdrawn.

Accordingly, in view of the amendments and remarks above, since Jones, Nakamura, Weaves, and Bryden either taken alone or in any combination thereof, do not teach, anticipate, or suggest, the presently claimed invention as recited for Claims 1-6, 9-14, 16-18, 26, and 29-30, Applicant believes that the rejection of Claims 1-6, 9-14, 16-18, 26, and 29-30 under 35 U.S.C. 103(a) has been overcome. The Examiner should withdraw the rejection of these claims.

### Conclusion

The foregoing is submitted as full and complete response to the Final Official Action mailed November 17, 2005, and it is submitted that Claims 1-33 are in condition for allowance. Reconsideration of the rejection is requested. Allowance of Claims 1-33 is earnestly solicited.

The present application, after entry of this Response Without Amendment, comprises thirty-three (33) claims, including eight (8) independent claims. Applicant has previously paid for thirty-three (33) claims including eight (8) independent claims. Applicant, therefore, believes that a fee for claim amendments is currently not due.

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If the Examiner believes that there are any informalities that can be corrected by Examiner's amendment, or that in any way it would help expedite the prosecution of the patent application, a telephone call to the undersigned at (561) 989-9811 is respectfully solicited.

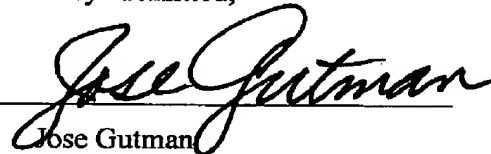
The Commissioner is hereby authorized to charge any fees that may be required or credit any overpayment to Deposit Account 50-1556.

In view of the preceding discussion, it is submitted that the claims are in condition for allowance. Reconsideration and re-examination is requested.

Respectfully submitted,

Date: January 17, 2006

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